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Pacwest Center  
1211 SW 5th Ave., Suite 1900  
Portland, OR 97204  
Telephone: 503.222.9981  
Facsimile: 503.796.2900

Attorneys for Defendant, KeyBank National Association

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

**ROBERT L. FOSTER,**

Plaintiff,

vs.

**KEYBANK NATIONAL  
ASSOCIATION,**

Defendant.

No. \_\_\_\_\_

Electronic Funds Transfer Act

NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §§ 1331, 1441, AND 1446  
(FEDERAL QUESTION)

**TO: THE CLERK OF THE ABOVE-ENTITLED COURT**

Please take notice that defendant KeyBank National Association (hereafter referred to as “Removing Party”) hereby gives notice of the removal of this action from the Circuit Court of the State of Oregon, County of Marion, where it is currently pending, to the United States District Court for the District of Oregon, Eugene Division pursuant to 28 U.S.C. §§1331, 1441,

and 1446. As addressed below, a federal question exists in this action as defined under 28 U.S.C. §1331. In support of this removal, Removing Party states as follows:

1.

### **INTRODUCTION AND BACKGROUND**

On August 12, 2013, plaintiff filed a Complaint (“Complaint”) captioned *Robert L. Foster v. KeyBank National Association*, in the Circuit Court of the State of Oregon, County of Marion, Case No. 13C19281. (See Compl., attached hereto as Exhibit A). Plaintiff Robert L. Foster (“Plaintiff”) alleges claims for breach of contract and violation of the Electronic Funds Transfer Act, 15 U.S.C.S. § 1693 *et. seq.* (“EFTA”). (See Compl., ¶¶ 8-20).

2.

As more fully set forth below, this case is properly removed to this Court under 28 U.S.C. § 1446 because (1) Removing Party has satisfied the procedural requirements for removal and (2) this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1441(c).

3.

### **REMOVING PARTY HAS SATISFIED**

### **THE PROCEDURAL REQUIREMENTS FOR REMOVAL**

Plaintiff served Removing Party with a Summons and Complaint on August 12, 2013.

4.

Pursuant to 28 U.S.C. §1446, a defendant desiring to remove a civil action from state court may do so by filing a notice of removal in the district court of the United States for the district and division where the action is pending within thirty (30) days of receiving Plaintiff’s initial pleading. 28 U.S.C. §§ 1446(a), (b). Removal is timely pursuant to 28 U.S.C. § 1446(b)

because less than thirty (30) days have passed since Plaintiff served the Complaint on the Removing Party.

5.

Pursuant to 28 U.S.C. §117 and LR 3-2(a)(3), the United States District Court for the District of Oregon, Eugene Division, is the federal judicial district and division encompassing the Circuit Court of the State of Oregon, County of Marion, where this lawsuit was originally filed. Venue is thus proper because this is the “district and division embracing the place where such action is pending.” *See* 28 U.S.C. § 1441(a).

6.

As required by 28 U.S.C. § 1446(a), Removing Party attached to this Notice a copy of all process, pleadings and orders served upon it as Exhibit A.

7.

As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being promptly served upon counsel for Plaintiff, and a copy is being filed with the Clerk of the Circuit Court of the State of Oregon, County of Marion. A true and correct copy of “Notice that Action has been Removed” filed in the Circuit Court of the State of Oregon, County of Marion, is attached hereto as Exhibit B. A copy of the “Notice to Plaintiff of Removal of Action Under 28 U.S.C. §§ 1331, 1441, and 1446 (Federal Question)” that Removing Party served on plaintiff contemporaneously to filing this Notice is attached to this Notice as Exhibit C.

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8.

**REMOVAL IS PROPER BECAUSE THE COURT HAS SUBJECT MATTER**

**JURISDICTION UNDER 28 U.S.C. §§1331 AND 1441.**

Plaintiff alleges that defendants interfered with and violated his rights under the federal EFTA, 15 U.S.C.S. § 1693 *et. seq.*, in addition to a state law claim for breach of contract.

9.

All state law claims are subject to removal based on supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) because Plaintiff's breach of contract claim arises out of the same alleged transaction or occurrence as Plaintiff's EFTA claim over which this Court has original jurisdiction.

10.

Removing Party is the only defendant in this action, so all defendants in the state court action consent to the removal of this action.

11.

Despite this Court's subject matter jurisdiction, the contract between the parties that is subject to this dispute contains an arbitration agreement. Removing Party intends to file a motion to compel arbitration upon effective removal of this case into this Court in the event the parties cannot stipulate to arbitration.

///

///

**WHEREFORE**, the Removing Party prays that the above-entitled action be removed from Marion County Circuit Court to the United States District Court for the District of Oregon, Eugene Division, for all further proceedings.

Dated this 6<sup>th</sup> day of September, 2013.

Respectfully submitted,

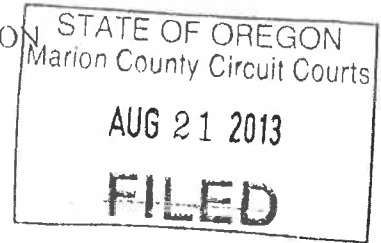
SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

Joel A. Parker, OSB #001633  
David A. Anderson, OSB #092707  
Telephone: 503.222.9981  
Facsimile: 503.796.2900  
Of Attorneys for Defendant,  
KeyBank National Association

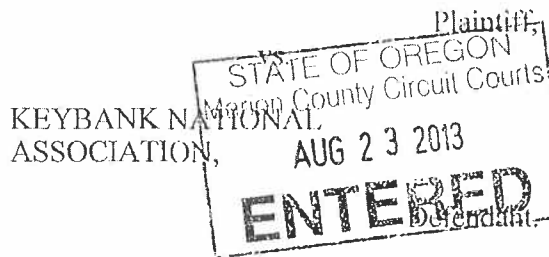
Trial Attorney: Joel A. Parker, OSB #001633

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION



ROBERT L. FOSTER,

No. 13C19281



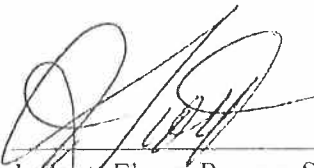
**RETURN OF SERVICE  
AFFIDAVIT**

After being received by Archangel Process Service to be served on KeyBank National Association, ("Defendant") whose offices are located at 416 State Street, Salem, OR 97301,

I, Jeffrey Scott Eberz, do hereby affirm that on the 12<sup>th</sup> day of August 2013, at about 3:16 p.m., and at the above described address, personally delivered to Defendant certified true and correct copies of the Summons, Complaint, and Case Assignment Notice in the above-entitled action.

The aforementioned documents were accepted for service by Mary Ray, Lead Teller for Defendant, and were served in the manner prescribed in ORCP (2011) 7D(2)(c), Office Service.

I am a competent person over 18 years of age and a resident of the State of Oregon. I am neither a party to, nor an officer, director, employee of, nor an attorney for any party in this case. The individual/party served by me in this case is the same person/entity named in the above captioned civil action.

  
J. Scott Eberz, Process Server  
ARCHANGEL PROCESS SERVICE  
5652 Kessler Dr. SE  
Salem OR 97306  
(503) 409-6104 – voice  
Fee: \$35.00

8/12/13  
Date

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

ROBERT L. FOSTER,

Plaintiff,

No. 13C19281

vs.

SUMMONS

KEYBANK NATIONAL  
ASSOCIATION

Defendant.

**TO: KeyBank National Association, Defendant.**

IN THE NAME OF THE STATE OF OREGON, you are hereby required to appear and answer the Complaint filed against you in the above-entitled court and cause within thirty (30) days from the date of service of this Summons upon you; and if you fail so to answer, for want thereof, the plaintiff will apply to the above-entitled court for the relief demanded in the Complaint.

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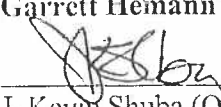
**NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear," you must file with the court a legal paper called a "Motion" or "Answer." The "Motion" or "Answer" must be given to the court clerk or administrator within thirty (30) days of the date of first service along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at [www.oregonstatebar.org](http://www.oregonstatebar.org) or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

To the best of our knowledge,  
KeyBank National Association  
can be served at:  
1211 SW 5<sup>th</sup> Avenue, Suite 300  
Portland OR 97204, Phone (503) 790-7406  
and  
Key Bank  
416 State Street, Salem OR 97301  
Ph (503) 399-2239

**Garrett Hemann Robertson P.C.**

  
J. Kevin Shuba (OSB No. 914263)  
P.O. Box 749  
Salem OR 97308-0749  
Phone: (503) 581-1501

STATE OF OREGON  
Marion County Circuit Courts

AUG 08 2013

ENTERED

STATE OF OREGON  
Marion County Circuit Courts

AUG 08 2013

FILED

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

ROBERT L. FOSTER,

Plaintiff,

vs.

KEYBANK NATIONAL  
ASSOCIATION

Defendant,

No. 13C19281

COMPLAINT

(Breach of Contract, Electronic Funds  
Transfer Act)

(\$104,763)

(OR Laws 2012, Ch 48, Sec 2;  
ORS 21.160(1)(c))

Plaintiff, Robert L. Foster, by and through his attorney J. Kevin Shuba of Garrett Hemann  
Robertson P.C. alleges as follows;

1.

Plaintiff at all material times mentioned herein, was and is a resident of Marion County,  
Oregon.

2.

Defendant, Key Bank, is a National Association which at all material times mentioned  
herein, has and does conduct regular, sustained business activity in Marion County, Oregon.

3.

On or around February 22, 2011, plaintiff and defendant entered into a contractual  
agreement (the "Contract") for defendant to provide plaintiff with a personal deposit account.  
Pursuant to the terms of the Contract, defendant was prohibited from initiating unauthorized  
electronic transfers of funds from plaintiff's account.

////

COMPLAINT:  
Foster v. Key Bank

n:\wpdocs\29034003\complaint.doc\jmh,JLT  
8/8/13 08:24:00

EXHIBIT A

Page 3 of 11

4.

Beginning on or about September 9, 2012 through about October 2, 2012 defendant initiated electronic transfers totaling \$34,921.05, at the direction of Steven Ray Zornow ("Zornow"). The electronic transfers caused by defendant at the direction of Zornow were not authorized by plaintiff, or any other party capable of authorizing transfers out of plaintiff's deposit account.

5.

On or around September 30, 2012, plaintiff became aware of the unauthorized electronic transfers by defendant. On or around the same date, plaintiff notified defendant of the unauthorized transfers.

6.

Plaintiff obtained no benefit from the unauthorized electronic transfers initiated by defendant.

7.

On or around November 8, 2012, Zornow plead guilty to, and was criminally sentenced for, aggravated identity theft, as a result of the unauthorized electronic transfers initiated by defendant at the direction of Zornow. A certified copy of the judgment is attached hereto as Exhibit 1.

# **FIRST CLAIM**

## **(Breach of Contract)**

8.

Plaintiff restates the allegations presented in paragraphs 1-6, above.

9.

The unauthorized electronic transfers caused by defendant constitute a breach of the Contract.

////

10.

As a result of defendant's breach of the Contract, plaintiff has been damaged in the amount of \$34,921.05.

## SECOND CLAIM

### (Electronic Funds Transfer Act)

11.

Plaintiff restates the allegations presented in paragraph 1-9, above.

12.

At all material times mentioned herein, defendant was and is subject to the Electronic Funds Transfer Act, 15 U.S.C.S. § 1693 et. seq. ("EFTA"). The EFTA governs, *inter alia*, consumers' liability for unauthorized electronic transfers of funds.

13.

The unauthorized transfers by defendant constitute an "error" as the term is defined and used in the EFTA, 15 U.S.C.S. § 1693(f).

14.

Pursuant to plaintiff's request, defendant investigated the unauthorized electronic transfers initiated by defendant at Zornow's discretion. On or around October 15, 2012, defendant contacted plaintiff by letter informing plaintiff of the result of its investigation. In its letter, defendant concludes that plaintiff authorized the transfers defendant initiated. A true and accurate copy of the letter is attached as Exhibit 2.

15.

Defendant failed to conclude its investigation of plaintiff's account within ten (10) days. In addition, defendant failed to provisionally recredit plaintiff's account within ten (10) days of commencing its investigation.

////

16.

Defendant did not make a good faith investigation of the alleged errors related to plaintiff's account.

17.

Defendant did not have a reasonable basis for believing that the plaintiff's account was not in error.

18.

Defendant knowingly and willfully concluded that plaintiff's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to defendant at the time of the investigation.

19.

Plaintiff is entitled to treble damages, pursuant to 15 U.S.C.S. § 1693(f), in the amount of \$104,763.15.

20.

Plaintiff is entitled to attorney fees pursuant to 15 U.S.C.S. § 1693(m) and ORCP 68.

WHEREFORE, plaintiff prays for judgment against defendant as follows:

1. Treble damages in the amount of \$104,763.15.
2. Attorney fees pursuant to 15 U.S.C.S. § 1693(m) and ORCP 68;
3. Costs and expenses; and

////

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1           4. Such further or alternative relief in favor of plaintiff as the court deems  
2 appropriate.

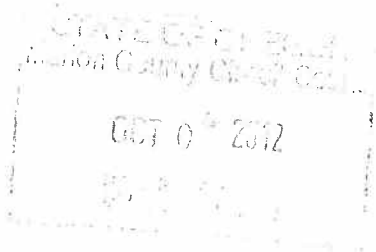
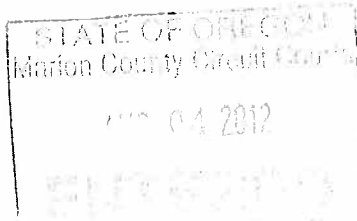
3           DATED this 8<sup>th</sup> day of August, 2013.

4  
5           GARRETT HEMANN ROBERTSON P.C.

6  
7           

8           J. Kevin Shuba  
9           (OSB No. 914263)  
10          jkshuba@ghrlawyers.com  
11          Of Attorneys for Plaintiff

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GARRETT HEMANN ROBERTSON P.C.  
WILLAMETTE PROFESSIONAL CENTER  
1011 COMMERCIAL STREET, N.E.  
P.O. BOX 49, ASTORIA, OREGON 97103-0049  
TEL: 503.325.3611 FAX: 503.325.3601



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

THE STATE OF OREGON )

Plaintiff, )

vs. )

STEVEN RAY ZORNOW, )

(DOB: 01/28/1988) )

Defendant )

No. 12C46870

INFORMATION

The above named defendant is accused by Walter M. Beglau, District Attorney for the County of Marion, by this information of the crimes of:

Count 01: ORS 165.803 AGGRAVATED IDENTITY THEFT(B Felony)

Count 02: ORS 164.057 AGGRAVATED THEFT IN THE FIRST DEGREE(B Felony)

committed as follows:

COUNT 01 The defendant, on or between September 10, 2012 to October 1, 2012, in Marion County, Oregon, did unlawfully, with intent to deceive and defraud, possess and utter personal identification of Robert Foster, defendant having violated ORS 165.800 in ten or more other separate incidents within a 180-day period.

COUNT 02 In an act of the same or similar character as alleged in Count 1, the defendant, on or between September 10, 2012 to October 1, 2012, in Marion County, Oregon, did unlawfully and knowingly commit theft of money, of the total value of \$10,000 or more, the property of Robert Foster.

Dated at Salem, Oregon, this 4<sup>th</sup> day of October, 2012.

WALTER M. BEGLAU  
Marion County District Attorney

By: *Henry Loeb*  
HENRY LOEB, OSB #78286  
Deputy District Attorney

I/C

HJL/jct

AGENCY: SMP AGENCY #: 12-38656

IDENTIFIERS: W/M Ht: 600 Wt: 294 Hair: RED Eyes: BLU SID: 16981266

INST: MARJ CNTRL# JMAR112090229

10/4/2012 COPIES: 1=Defendant; 1=File; 1=meso



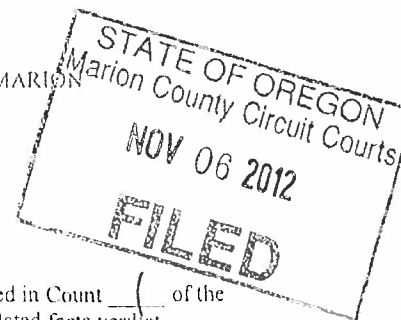
IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MARION

THE STATE OF OREGON, )  
 plaintiff, )  
 vs. )  
Zornow, Steven Ray )  
 defendant )

JUDGMENT

Case # 12C 46870

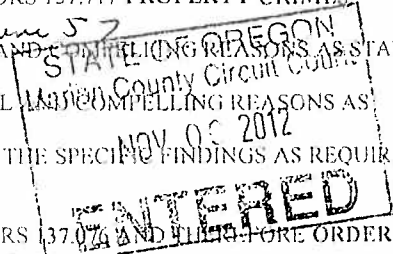
Count # 1



Defendant has been convicted of felony Aggravated Identity Theft, as alleged in Count 1 of the  
 ( ) amended indictment/information, by X Guilty plea;        No contest plea;        Jury/Court verdict;        Stipulated facts verdict.  
X Defendant is present with legal counsel. Defendant knowingly waived attorney after advice of rights.  
 The Court finds a presumptive ( ) probationary X prison term of 26 months, with a grid block of CSS: 5 / CHS: F

IT IS HEREBY ORDERED THAT: THIS X IS ( ) IS NOT A GUIDELINES SENTENCE. X THIS IS A STIPULATED SENTENCE.  
X THIS SENTENCE IS A PRESUMPTIVE SENTENCE. ( ) THIS IS A PERSON CRIME CONVICTION. ( ) THIS IS A BM11(ORS 137.700) CONVICTION.

- ( ) THIS SENTENCE IS A DETERMINATE SENTENCE PURSUANT TO ORS 137.635. X THIS IS A ORS 137.717 PROPERTY CRIMES SENTENCE.
- ( ) THIS SENTENCE IS A DURATIONAL DEPARTURE, AND THE COURT FINDS SUBSTANTIAL AND COMPELLING REASONS AS STATED IN THE RECORD.
- ( ) THIS SENTENCE IS A DISPOSITIONAL DEPARTURE, AND THE COURT FINDS SUBSTANTIAL AND COMPELLING REASONS AS STATED IN THE RECORD.
- ( ) THIS SENTENCE IS AN OPTIONAL PROBATIONARY SENTENCE, AND THE COURT MAKES THE SPECIFIC FINDINGS AS REQUIRED AND AS STATED IN THE RECORD.
- ( ) THIS IS A BALLOT MEASURE 73 CONVICTION.
- X THE COURT FINDS THAT DEFENDANT HAS BEEN CONVICTED OF A CRIME SPECIFIED IN ORS 137.012 AND THEREFORE ORDERS THAT DEFENDANT SHALL PROVIDE A BLOOD/BUCCAL SAMPLE AT THE DIRECTION OF MCCC/OSCD.
- ( ) DEFENDANT SHALL register as a sex offender pursuant to ORS 181.594-181.596.
- ( ) DEFENDANT shall submit to an HIV test pursuant to ORS 135.139.



X DEFENDANT SHALL BE COMMITTED TO THE CUSTODY OF OREGON STATE DEPARTMENT OF CORRECTIONS/MARION COUNTY SUPERVISORY AUTHORITY FOR 26 MONTHS. THE LENGTH OF POST-PRISON SUPERVISION SHALL BE 24 MONTHS. If defendant violates conditions of post-prison supervision, defendant shall be subject to sanctions including possibility of additional imprisonment.

( ) The Court finds beyond a reasonable doubt that defendant used or threatened the use of a firearm. The defendant shall serve a mandatory minimum of        pursuant to ORS 161.610.

X Defendant MAY be considered for various leave, release or program options pursuant to SB 936, SECTION 14 (1997).

( ) Defendant MAY NOT be considered for various leave, release or program options pursuant to SB 936, based upon SUBSTANTIAL AND COMPELLING REASONS AS STATED IN THE RECORD, pursuant to ORS 137.750 or based upon the fact that this is a conviction pursuant to ORS 137.700 (Ballot Measure 11).

X DOC may release the defendant on post-prison supervision under ORS 421.508(4).

( ) DEFENDANT SHALL BE PLACED ON PROBATION TO ( ) Marion County Corrections ( ) Court ( ) Pursuant to 137.012 for a period of        months with the following conditions comprising the terms thereof:

DEFENDANT SHALL SERVE THE SANCTION UNITS SET FORTH IN THE ATTACHED CONDITIONS OF PROBATION, IN A CORRECTIONAL FACILITY OR AS PART OF A CUSTODY PROGRAM.

( ) THE COURT FINDS SUBSTANTIAL AND COMPELLING REASONS AS STATED IN THE RECORD to DEPART on the number of sanction units available for use during the probation term, for a TOTAL OF        SANCTION UNITS, WITH        UNITS IN THE CUSTODY OF THE MARION COUNTY JAIL.

( ) Defendant shall NOT receive credit for presentence incarceration.

(X) Defendant shall obey all municipal, county, state and federal laws.

( ) Attached conditions of supervision dated        are incorporated herein.

( )

X The incarceration shall be served CONSECUTIVELY with: X any sentence previously imposed, ( )         
 ( ) DEFENDANT IS SENTENCED to pay to the Clerk of the Court the amounts designated under the Money Award section, which is set forth hereafter and by this reference incorporated herein. DEFENDANT shall advise the clerk of any new address.

(X) State's motion to dismiss is allowed for count(s) 2

( ) Defendant shall not return to or reside illegally in the United States.

( ) Defendant may be released sooner to the Immigration and Naturalization Service for purposes of deportation.

DEFENDANT stipulates that the following is/are a nuisance and shall be destroyed:       

IT IS FURTHER ORDERED that the Defendant, having knowingly waived indictment (see attached) stipulates that the following items are hereby forfeited pursuant to ORS 131.550 - 131.600:       

      , and defendant waives all right, title and interest to said property.  
 IT IS FURTHER ORDERED AND ADJUDGED that:       

IT IS FURTHER ORDERED THAT ANY WARRANT FILED HEREIN SHALL BE WITHDRAWN.

Exhibit 1 page 2 of 3  
 EXHIBIT MC28-C/C-35A

Court No. 12C46870

## MONEY AWARD

Count No. 1

JUDGMENT CREDITOR: STATE OF OREGON

JUDGMENT DEBTOR(S): Zornow, Steven Ray and  
\_\_\_\_\_, jointly and severally.

## ITEMIZED OBLIGATIONS:

Restitution/Compensatory fine, is ordered to be paid to the Court and disbursed to:

\$ \_\_\_\_\_ ( ) \_\_\_\_\_

(name and address of victim or agent)

\$ \_\_\_\_\_ ( ☒ ) State allowed 60 days to submit Restitution

(name and address of victim or agent)

\$ \_\_\_\_\_ ( ☒ ) Per Restitution Addendum/Compensatory fine attached hereto and by this reference incorporated herein

\$ \_\_\_\_\_ ( ) A \$100 bench probation fee ( ) \$35 (Felony surcharge)

\$ 200.00 \$ 200.00 Fine

\$ \_\_\_\_\_ ORS Chapter 163 Assessment \$ \_\_\_\_\_ of above fine is compensatory

\$ \_\_\_\_\_ MCS/DCS Assessment \$ \_\_\_\_\_ of fine is waived/suspended upon completion

\$ \_\_\_\_\_ of ORS Chapter 163/MCS/DCS Assessment treatment/programs/education/community

are suspended/waived upon completion service/probation

treatment/programs/education/community service/probation

\$ 820 Attorney Fees (Costs) Defendant was found by the Court to be indigent, counsel was appointed and defendant shall pay costs pursuant to ORS 161.665 [less any previously court-ordered contribution]

\$ \_\_\_\_\_ of Attorney Fees are waived/suspended upon completion treatment/programs/education/community service/probation

\$ 1020.00 TOTAL AMOUNT OF MONEY AWARD

Defendant shall pay this Money Award to the Court as follows:

\_\_\_\_\_ Make payments in accordance with a schedule of payments established by the Court's Collection Office.

☒ Pay this balance immediately; any unpaid portion upon release from incarceration shall be paid at a rate determined by Department of Corrections and/or Board of Parole and Post Prison SupervisionIT IS FURTHER ORDERED that: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk apply payment upon this money award as provided by law and apply any bail or security on deposit herein toward this money award and, to the extent permitted by law, disburse them first to compensatory fines, then to restitution, Crime Victim Assessment, fines, assessments, fees and then to other costs adjudged herein.

Judge Boyle  
Ct. Rptr. Vide  
DDA Lebe  
Def Atty. Salme  
Arresting Agency SMP  
Crime Date 4-10-12 10-1-12  
Control Number JMAR112090229DATED this 6 day of November, 2012.Aucley Boyle  
CIRCUIT COURT JUDGE

NOTICE TO THOSE OWING MONEY TO THE COURT: The law allows fees to recover administrative and collection costs to be automatically added and collected, without further notice to you or action by the court, when the court has to establish a payment account, refer a matter for collection, or send DMV a suspension notice.

Judgment - Page 2 of 2 COPIES: Blue=Court Desk/MCDC; Green=MCSO/OSCD; Canary=DA; Pink=Def; Goldenrod=Atty

COPY

October 15, 2012

RE: 544927\*\*\*\*\*9764

ROBERT FOSTER  
4820 SAN GABRIEL CT NE  
SALEM, OR 97305-2640



**Card Fraud Services**  
Mail Code WA-31-01-0375  
1101 Pacific Ave  
P.O. Box 1816  
Tacoma, WA 98401-1816  
Fax: 866-622-6394

Dear ROBERT FOSTER:

Your business is important to us and we are committed to providing you with excellent service. We have received your inquiry regarding the transaction(s) listed on the attached page.

We have reviewed the information you sent to us regarding this dispute on your debit card as well as in subsequent phone conversations. During our phone conversation on October 2, 2012, you stated that the suspect was able to conduct these transactions after copying down your debit card number while he was living in your home. However, during our phone conversation on October 5, 2012, you stated your physical card went missing from September 12, 2012 through September 16, 2012 and then the suspect returned the card to you. This claimed theft was not reported to KeyBank until September 30, 2012. Also during our phone conversations, you stated that you had never allowed the suspect to use your debit card and yet the suspect had been paying bills for you using your debit card. Lastly, the branch withdrawal on September 13, 2012 that you claimed as fraudulent, which photos prove was done by the suspect, was found to be a valid transaction. A branch employee identified you outside of the branch and had you sign the withdrawal slip allowing the suspect to make that transaction. Based upon the information you provided KeyBank, we have found conflicting information and have reason to believe that the transactions in question were in fact authorized. Consequently, no credit will be issued to your account and we now consider this matter closed.

If you have any questions, or would like to request copies of the documentation we relied upon in making this determination, please feel free to contact us toll-free at 1-888-423-8757, extension 8138605, Monday through Friday from 5:00am to 5:00pm PST.

Best Regards,

*Rachel L*

Rachel L  
Card Fraud Services

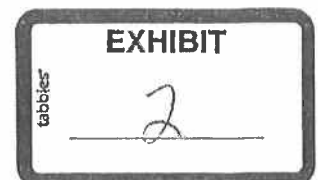


Exhibit 2 page 1 of 1

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EXHIBIT A  
Page 11 of 11

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

ROBERT L. FOSTER,

Plaintiff,

vs.

KEYBANK NATIONAL ASSOCIATION,

Defendant.

No. 13C19281

NOTICE THAT ACTION HAS BEEN  
REMOVED

**TO: CLERK OF THE ABOVE-ENTITLED COURT**

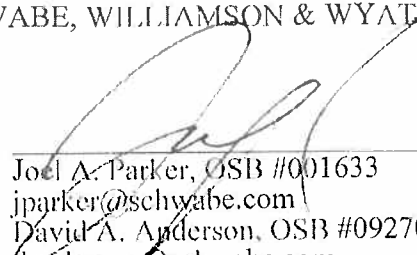
Pursuant to 28 USC § 1446(a), defendant KeyBank National Association ("KeyBank") filed a Notice of Removal in the United States District Court for the District of Oregon on September 6, 2013. A file-stamped copy of that Notice is attached as Exhibit 1.

The filing of the Notice effects removal of this case, and, pursuant to 28 USC § 1446(d), "the State court shall proceed no further unless and until the case is remanded."

Dated this 6<sup>th</sup> day of September, 2013.

SCHWABE, WILLIAMSON & WYATT, P.C.

By:

  
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KeyBank National Association

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Attorneys for

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

**ROBERT L. FOSTER,**

Plaintiff,

vs.

**KEYBANK NATIONAL  
ASSOCIATION,**

Defendant.

No. \_\_\_\_\_

Electronic Funds Transfer Act

NOTICE TO PLAINTIFF OF REMOVAL OF  
ACTION UNDER 28 U.S.C. §§ 1331, 1441,  
AND 1446 (FEDERAL QUESTION)

**TO: PLAINTIFF ROBERT L. FOSTER**

Please take notice that on September 6, 2013, defendant KeyBank National Association ("KeyBank") removed this action from the Circuit Court of the State of Oregon, County of Marion, to the United States District Court for the District of Oregon, under Federal Case No. \_\_\_\_\_. KeyBank is the only defendant in this matter so all defendants consent to this removal.

Page 1 - NOTICE TO PLAINTIFF OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §§ 1331, 1441, AND 1446 (FEDERAL  
QUESTION)

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EXHIBIT C  
Page 1 of 2

A copy of the Notice of Removal filed in the Office of the Clerk of the United States District Court for the District of Oregon, dated September 6, 2013, is attached. A copy of this Notice has also been filed with the Clerk of the Marion County Circuit Court of the State of Oregon.

Dated this 6<sup>th</sup> day of September, 2013.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By:

---

Joel A. Parker, OSB #001633  
David A. Anderson, OSB #092707  
Telephone: 503.222.9981  
Facsimile: 503.796.2900  
Of Attorneys for Defendant,  
KeyBank National Association

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of September, 2013, I caused to be served the foregoing NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1331, 1441, AND 1446 (FEDERAL QUESTION) on the following party at the following address:

J. Kevin Shuba  
Garrett Hemann Robertson P.C.  
1011 Commercial St NE  
PO Box 749  
Salem, OR 97308-0749  
E-Mail: jkshuba@ghrlawyers.com

*Of Attorneys for Plaintiff*

by:

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U.S. Postal Service, ordinary first class mail  
U.S. Postal Service, certified or registered mail,  
return receipt requested  
hand delivery  
facsimile  
electronic service  
other (specify) \_\_\_\_\_

  
\_\_\_\_\_  
Joel A. Parker, OSB #001633